

May 13, 2021

Yvette T. Collazo Reyes, Director
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Room 3166A WJCE
Mail Code: 7401M
Washington, DC 20460

Re: EPA Consideration of Request for Reconsideration of “Petition to Require Health and Environmental Testing Under the Toxic Substances Control Act on Certain PFAS Manufactured by Chemours in Fayetteville, NC”

Dear Ms. Collazo Reyes:

The above-referenced TSCA Section 21 Petition was previously denied by EPA and your office has received a request for reconsideration of the Petition and subsequent correspondence. Chemours is concerned that these communications contain information that is incorrect or incomplete. Accordingly, if EPA is going to reconsider the Petition, we ask that you review and take into consideration all of the information that has been made available to the Agency in an open process and with the opportunity for additional comments.

As the sole commercial entity named in the Petition, Chemours submitted a detailed response to the allegations in the Petition within the 90-day statutory period.¹ Subsequently, EPA denied the Petition, issuing a thorough explanation for its decision.² On March 3, 2021, the Petitioners filed a civil action in the United States District Court for the Northern District of California challenging the EPA’s decision to deny the Petition.³

We are aware of several communications by the Petitioners and others regarding EPA’s denial of the Petition that have been submitted to EPA following its final determination. Specifically, Petitioners submitted letters on March 4, 2021 and April 12, 2021 asking EPA to “reconsider” its denial of the Petition. In the latter correspondence, Petitioners also referenced a March 29, 2021 meeting with EPA regarding the Petition. It is unclear if Petitioners provided EPA supplemental or supporting materials during the course of that meeting or afterwards to which third parties, including Chemours, might

¹ The submission made on behalf of Chemours appears in the Agency’s docket: [[HYPERLINK "https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0565-0013"](https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0565-0013)].

² 86 Fed. Reg. 6,602 (Jan. 22, 2021).

³ *Center for Environmental Health et al v. Nishida et al*, No. 4:21-cv-1535-PJH (N.D. Ca.). It seems reasonable to expect Petitioners to withdraw their litigation should the Agency decide to reconsider the Petition.

gain access and be allowed further opportunity to provide substantive responses to their contents.

Significantly, the two referenced letters contain misstatements and inaccuracies regarding the available information for the 54 chemical substances subject to the Petition, including the following:

First, the letters represent that all 54 PFAS have been detected in the vicinity of Chemours' Fayetteville Works. However, as set forth in Chemours' response to the Petition, based on chemical properties and available sampling information, only a subset of these chemicals have actually been detected near Fayetteville Works, with some detections less than 1% of the times sampled.

Second, Petitioners describe the lack of substantive data as a reason to grant the Petition. However, as Chemours detailed in its response to the Petition, significant data exist regarding the 54 chemicals, both in terms of exposure and toxicity. Moreover, as discussed in Chemours' submission, the lack of data regarding some of the substances noted in the Petition should be reasonably anticipated in light of the physical-chemical properties of those substances - which are not chemically stable, are not water soluble, or are not manufactured by Chemours.

Third, the Petitioners incorrectly assert that the Section 21 Petition is the only means through which EPA or state regulators may evaluate the potential risks of PFAS to residents of North Carolina. To the contrary, the State of North Carolina and EPA are already acutely attuned to the PFAS issues raised in the Petition and are expending considerable resources to better understand and respond to them. For instance, North Carolina and Chemours entered into a Consent Order in February 2019, which, among other things: (1) has drastically reduced PFAS emissions from Fayetteville Works; (2) provides for replacement drinking water to impacted households; and (3) provides for PFAS testing, including PFAS toxicity studies for a group of chemical substances selected by the State. EPA has also taken significant measures to better understand PFAS exposure and toxicity, which the Agency has prioritized, including as expressed in the Administrator's April 27 statements and commitment to form EPA's Council on PFAS in furtherance of enhancing the Agency's PFAS Action Plan.⁴ The fact that EPA has not agreed to undertake Petitioners' specific testing proposal is not evidence of a lack of attention by the Agency to address these substantive issues.

⁴ [HYPERLINK "<https://www.epa.gov/newsreleases/epa-administrator-regan-establishes-new-council-pfas>"].

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The foregoing is intended to highlight just a few of the reasons for EPA to review Chemours' substantive response to the Petition if it chooses to undertake Petitioners' reconsideration request. As reflected above, if EPA decides to reconsider its original denial of the Petition, Chemours requests that EPA provide public notice of this fact and establish a process that will enable interested parties such as Chemours to publicly participate in the reconsideration decision-making process.

Please contact me at (302) 824-5018 if you have any questions, or if you would like to arrange a time to further discuss Chemours' perspective and information regarding the Petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy O Keefe", with a long horizontal flourish extending to the right.

Kathy O Keefe

cc:

Dr. Tala R. Henry, Deputy Director for Programs
Office of Pollution Prevention and Toxics